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Agenda item 79

United Nations Programme of Assistance in the Teaching, Study, Dissemination and Wider Appreciation of International Law

Ghana: draft resolution

United Nations Programme of Assistance in the Teaching, Study, Dissemination and Wider Appreciation of International Law

The General Assembly,

Reaffirming its commitment to the purposes and principles of the Charter of the United Nations and international law and to an international order based on the rule of law and international law, which is essential for peaceful coexistence and cooperation among States,

Recalling its resolution 2099 (XX) of 20 December 1965, in which it established the United Nations Programme of Assistance in the Teaching, Study, Dissemination and Wider Appreciation of International Law to contribute towards a better knowledge of international law as a means of strengthening international peace and security and of promoting friendly relations and cooperation among States,

Noting the significant contribution of the Programme of Assistance to a better knowledge of international law for more than four decades, as envisaged in the above resolution,

Considering, nevertheless, that much remains to be done in this field,

Taking note with appreciation of the report of the Secretary-General on the implementation of the Programme of Assistance¹ and the views of the Advisory Committee on the Programme of Assistance, which are contained in that report,

Considering that international law should occupy an appropriate place in the teaching of legal disciplines at all universities,

¹ A/62/503.



Noting with appreciation the efforts made by States at the bilateral level to provide assistance in the teaching and study of international law,

Convinced, nevertheless, that States and international organizations and institutions should be encouraged to give further support to the Programme of Assistance and increase their activities to promote the teaching, study, dissemination and wider appreciation of international law, in particular those activities which are of special benefit to persons from developing countries,

Reaffirming that in the conduct of the Programme of Assistance it would be desirable to use as far as possible the resources and facilities made available by Member States, international organizations and others,

Reaffirming also the hope that, in appointing lecturers for the seminars to be held within the framework of the fellowship programmes in international law, account would be taken of the need to secure the representation of major legal systems and balance among various geographical regions,

1. *Approves* the guidelines and recommendations contained in section III of the report of the Secretary-General,¹ as well as the recommendations made by the Advisory Committee on the Programme of Assistance in the Teaching, Study, Dissemination and Wider Appreciation of International Law, in particular those designed to achieve the best possible results in the administration of the Programme of Assistance within a policy of maximum financial restraint;

2. *Authorizes* the Secretary-General to carry out in 2008 and 2009 the activities specified in his report, including the provision of:

(a) A number of international law fellowships in both 2008 and 2009, to be determined in the light of the overall resources for the Programme of Assistance and to be awarded at the request of Governments of developing countries;

(b) A minimum of one scholarship in both 2008 and 2009 under the Hamilton Shirley Amerasinghe Memorial Fellowship on the Law of the Sea, subject to the availability of new voluntary contributions made specifically to this fellowship fund;

(c) Subject to the overall resources for the Programme of Assistance, assistance in the form of a travel grant for one participant from each developing country, who would be invited to possible regional courses to be organized in 2008 and 2009; and to finance the above activities from provisions in the regular budget, when appropriate, as well as from voluntary financial contributions earmarked for each of the activities concerned, which would be received as a result of the requests set out in paragraphs 18 to 20 below;

3. *Expresses its appreciation* to the Secretary-General for his constructive efforts to promote training and assistance in international law within the framework of the Programme of Assistance in 2006 and 2007, in particular for the organization of the forty-second² and forty-third³ sessions of the International Law Seminar, held at Geneva in 2006 and 2007, respectively, and for the activities of the Office of Legal Affairs of the Secretariat related to the International Law Fellowship

² See *Official Records of the General Assembly, Sixty-first Session, Supplement No. 10 (A/61/10)*, chap. XIII, sect. F.

³ *Ibid.*, *Sixty-second Session, Supplement No. 10 (A/62/10)*, chap. X, sect. E.

Programme and to the Hamilton Shirley Amerasinghe Memorial Fellowship on the Law of the Sea, carried out, respectively, through its Codification Division and its Division for Ocean Affairs and the Law of the Sea;

4. *Requests* the Secretary-General to consider admitting, for participation in the various components of the Programme of Assistance, candidates from countries willing to bear the entire cost of such participation;

5. *Also requests* the Secretary-General to consider the relative advantages of using available resources and voluntary contributions for regional, subregional or national courses, as against courses organized within the United Nations system;

6. *Further requests* the Secretary-General to continue to provide the necessary resources to the programme budget for the Programme of Assistance for the next and the future bienniums with a view to maintaining the effectiveness of the Programme of Assistance;

7. *Recognizes* the importance of the United Nations legal publications prepared by the Office of Legal Affairs, and strongly encourages their continued publication;

8. *Welcomes* the efforts undertaken by the Office of Legal Affairs to bring up to date the United Nations legal publications;

9. *Also welcomes* the placing on the Internet of the *Reports of International Arbitral Awards*,⁴ the *Summaries of Judgments, Advisory Opinions and Orders of the International Court of Justice*⁵ and other legal information, as well as the expansion of the website of the International Law Commission⁶ to include all its documentation;

10. *Further welcomes* the establishment of the website on the Programme of Assistance;⁷

11. *Notes* the need to safeguard and preserve the audiovisual history of legal developments within the United Nations, which constitutes an invaluable resource for promoting a better knowledge of international law;

12. *Notes with satisfaction* the efforts made by the Codification Division of the Office of Legal Affairs to revitalize, within available resources, the United Nations Audiovisual Library of International Law, and urges States to make voluntary contributions to enable the Codification Division to develop and maintain the Library;

13. *Welcomes* the training and technical assistance activities in international law undertaken by the Office of Legal Affairs in the framework of the Programme of Assistance, as described in the report of the Secretary-General, and encourages the continuation of such activities within available resources;

14. *Expresses its appreciation* to the United Nations Institute for Training and Research for its participation in the Programme of Assistance through the activities described in the report of the Secretary-General;

⁴ <http://untreaty.un.org/cod/riaa/index.html>.

⁵ <http://www.un.org/law/ICJsummaries>.

⁶ <http://www.un.org/law/ilc>.

⁷ <http://www.un.org/law/programmeofassistance>.

15. *Also expresses its appreciation* to the United Nations Educational, Scientific and Cultural Organization for its participation in the Programme of Assistance through the activities described in the report of the Secretary-General;

16. *Further expresses its appreciation* to The Hague Academy of International Law for the valuable contribution it continues to make to the Programme of Assistance, which has enabled candidates under the International Law Fellowship Programme to attend and participate in the Fellowship Programme in conjunction with the Academy courses;

17. *Notes with appreciation* the contributions of The Hague Academy to the teaching, study, dissemination and wider appreciation of international law, and calls upon Member States and interested organizations to give favourable consideration to the appeal of the Academy for a continuation of support and a possible increase in their financial contributions, to enable the Academy to carry out its activities, particularly those relating to the summer courses, regional courses and programmes of the Centre for Studies and Research in International Law and International Relations;

18. *Requests* the Secretary-General to continue to publicize the Programme of Assistance and periodically to invite Member States, universities, philanthropic foundations and other interested national and international institutions and organizations, as well as individuals, to make voluntary contributions towards the financing of the Programme of Assistance or otherwise to assist in its implementation and possible expansion;

19. *Reiterates its request* to Member States and to interested organizations and individuals to make voluntary contributions, inter alia, for the International Law Seminar, the International Law Fellowship Programme, the Hamilton Shirley Amerasinghe Memorial Fellowship on the Law of the Sea and the United Nations Audiovisual Library of International Law, and expresses its appreciation to those Member States, institutions and individuals that have made voluntary contributions for this purpose;

20. *Urges* in particular all Governments to make voluntary contributions for the organization of regional courses in international law by the Codification Division of the Office of Legal Affairs, in collaboration with the United Nations Institute for Training and Research, especially with a view to covering the amount needed for the financing of the daily subsistence allowance for up to twenty-five participants in each regional course, thus alleviating the burden on prospective host countries and making it possible to continue to organize the regional courses;

21. *Decides* to appoint twenty-five Member States, six from Africa, five from Asia, three from Eastern Europe, five from Latin America and the Caribbean and six from Western European and other States, as members of the Advisory Committee on the Programme of Assistance for a period of four years beginning on 1 January 2008;⁸

⁸ The following States have been appointed members of the Advisory Committee on the Programme of Assistance: Canada, Colombia, Cyprus, Czech Republic, Ethiopia, France, Germany, Ghana, Iran (Islamic Republic of), Italy, Jamaica, Kenya, Lebanon, Malaysia, Mexico, Nigeria, Pakistan, Portugal, Russian Federation, Sudan, Trinidad and Tobago, Ukraine, United Republic of Tanzania, United States of America and Uruguay.

22. *Requests* the Secretary-General to report to the General Assembly at its sixty-fourth session on the implementation of the Programme of Assistance during 2008 and 2009 and, following consultations with the Advisory Committee on the Programme of Assistance, to submit recommendations regarding the execution of the Programme of Assistance in subsequent years;

23. *Decides* to include in the provisional agenda of its sixty-fourth session the item entitled "United Nations Programme of Assistance in the Teaching, Study, Dissemination and Wider Appreciation of International Law".

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Sixty-second session
Sixth Committee
Agenda item 83
Diplomatic protection

Draft resolution

Diplomatic protection

The General Assembly,

Having considered chapter IV of the report of the International Law Commission on the work of its fifty-eighth session,¹ which contains the draft articles on diplomatic protection,²

Noting that the Commission decided to recommend to the General Assembly the elaboration of a convention on the basis of the draft articles on diplomatic protection,³

Emphasizing the continuing importance of the codification and progressive development of international law, as referred to in Article 13, paragraph 1 (a), of the Charter of the United Nations,

Noting that the subject of diplomatic protection is of major importance in the relations of States,

Taking into account the comments and observations of Governments⁴ and the discussion held in the Sixth Committee at the sixty-second session of the General Assembly on diplomatic protection,

1. *Welcomes* the conclusion of the work of the International Law Commission on diplomatic protection and its adoption of the draft articles and commentary on the topic;⁵

¹ *Official Records of the General Assembly, Sixty-first Session, Supplement No. 10 (A/61/10).*

² *Ibid.*, para. 49.

³ *Ibid.*, para. 46.

⁴ A/62/118 and Add.1.

⁵ *Official Records of the General Assembly, Sixty-first Session, Supplement No. 10 (A/61/10), paras. 43 and 44.*



2. *Expresses its appreciation* to the International Law Commission for its continuing contribution to the codification and progressive development of international law;

3. *Commends* the articles on diplomatic protection presented by the International Law Commission, the text of which is annexed to the present resolution, to the attention of Governments, and invites them to submit in writing to the Secretary-General any further comments concerning the recommendation by the Commission to elaborate a convention on the basis of the articles;³

4. *Decides* to include in the provisional agenda of its sixty-fifth session an item entitled "Diplomatic protection" and to further examine, within the framework of a working group of the Sixth Committee, in light of the written comments of Governments, as well as views expressed in the debates held at the sixty-second session of the General Assembly, the question of a convention on diplomatic protection, or any other appropriate action, on the basis of the above-mentioned articles.

Annex

Diplomatic protection

Part one

General provisions

Article 1

Definition and scope

For the purposes of the present draft articles, diplomatic protection consists of the invocation by a State, through diplomatic action or other means of peaceful settlement, of the responsibility of another State for an injury caused by an internationally wrongful act of that State to a natural or legal person that is a national of the former State with a view to the implementation of such responsibility.

Article 2

Right to exercise diplomatic protection

A State has the right to exercise diplomatic protection in accordance with the present draft articles.

Part two

Nationality

Chapter I

General principles

Article 3

Protection by the State of nationality

1. The State entitled to exercise diplomatic protection is the State of nationality.
2. Notwithstanding paragraph 1, diplomatic protection may be exercised by a State in respect of a person that is not its national in accordance with draft article 8.

Chapter II

Natural persons

Article 4

State of nationality of a natural person

For the purposes of the diplomatic protection of a natural person, a State of nationality means a State whose nationality that person has acquired, in accordance with the law of that State, by birth, descent, naturalization, succession of States or in any other manner, not inconsistent with international law.

Article 5

Continuous nationality of a natural person

1. A State is entitled to exercise diplomatic protection in respect of a person who was a national of that State continuously from the date of injury to the date of the official presentation of the claim. Continuity is presumed if that nationality existed at both these dates.

2. Notwithstanding paragraph 1, a State may exercise diplomatic protection in respect of a person who is its national at the date of the official presentation of the claim but was not a national at the date of injury, provided that the person had the nationality of a predecessor State or lost his or her previous nationality and acquired, for a reason unrelated to the bringing of the claim, the nationality of the former State in a manner not inconsistent with international law.

3. Diplomatic protection shall not be exercised by the present State of nationality in respect of a person against a former State of nationality of that person for an injury caused when that person was a national of the former State of nationality and not of the present State of nationality.

4. A State is no longer entitled to exercise diplomatic protection in respect of a person who acquires the nationality of the State against which the claim is brought after the date of the official presentation of the claim.

Article 6

Multiple nationality and claim against a third State

1. Any State of which a dual or multiple national is a national may exercise diplomatic protection in respect of that national against a State of which that person is not a national.

2. Two or more States of nationality may jointly exercise diplomatic protection in respect of a dual or multiple national.

Article 7

Multiple nationality and claim against a State of nationality

A State of nationality may not exercise diplomatic protection in respect of a person against a State of which that person is also a national unless the nationality of the former State is predominant, both at the date of injury and at the date of the official presentation of the claim.

Article 8

Stateless persons and refugees

1. A State may exercise diplomatic protection in respect of a stateless person who, at the date of injury and at the date of the official presentation of the claim, is lawfully and habitually resident in that State.

2. A State may exercise diplomatic protection in respect of a person who is recognized as a refugee by that State, in accordance with internationally accepted standards, when that person, at the date of injury and at the date of the official presentation of the claim, is lawfully and habitually resident in that State.

3. Paragraph 2 does not apply in respect of an injury caused by an internationally wrongful act of the State of nationality of the refugee.

Chapter III

Legal persons

Article 9

State of nationality of a corporation

For the purposes of the diplomatic protection of a corporation, the State of nationality means the State under whose law the corporation was incorporated. However, when the corporation is controlled by nationals of another State or States and has no substantial business activities in the State of incorporation, and the seat of management and the financial control of the corporation are both located in another State, that State shall be regarded as the State of nationality.

Article 10

Continuous nationality of a corporation

1. A State is entitled to exercise diplomatic protection in respect of a corporation that was a national of that State, or its predecessor State, continuously from the date of injury to the date of the official presentation of the claim. Continuity is presumed if that nationality existed at both these dates.
2. A State is no longer entitled to exercise diplomatic protection in respect of a corporation that acquires the nationality of the State against which the claim is brought after the presentation of the claim.
3. Notwithstanding paragraph 1, a State continues to be entitled to exercise diplomatic protection in respect of a corporation which was its national at the date of injury and which, as the result of the injury, has ceased to exist according to the law of the State of incorporation.

Article 11

Protection of shareholders

A State of nationality of shareholders in a corporation shall not be entitled to exercise diplomatic protection in respect of such shareholders in the case of an injury to the corporation unless:

- (a) The corporation has ceased to exist according to the law of the State of incorporation for a reason unrelated to the injury; or
- (b) The corporation had, at the date of injury, the nationality of the State alleged to be responsible for causing the injury, and incorporation in that State was required by it as a precondition for doing business there.

Article 12

Direct injury to shareholders

To the extent that an internationally wrongful act of a State causes direct injury to the rights of shareholders as such, as distinct from those of the corporation itself, the State of nationality of any such shareholders is entitled to exercise diplomatic protection in respect of its nationals.

Article 13

Other legal persons

The principles contained in this chapter shall be applicable, as appropriate, to the diplomatic protection of legal persons other than corporations.

Part three

Local remedies

Article 14

Exhaustion of local remedies

1. A State may not present an international claim in respect of an injury to a national or other person referred to in draft article 8 before the injured person has, subject to draft article 15, exhausted all local remedies.
2. "Local remedies" means legal remedies which are open to an injured person before the judicial or administrative courts or bodies, whether ordinary or special, of the State alleged to be responsible for causing the injury.
3. Local remedies shall be exhausted where an international claim, or request for a declaratory judgement related to the claim, is brought preponderantly on the basis of an injury to a national or other person referred to in draft article 8.

Article 15

Exceptions to the local remedies rule

Local remedies do not need to be exhausted where:

- (a) There are no reasonably available local remedies to provide effective redress, or the local remedies provide no reasonable possibility of such redress;
- (b) There is undue delay in the remedial process which is attributable to the State alleged to be responsible;
- (c) There was no relevant connection between the injured person and the State alleged to be responsible at the date of injury;
- (d) The injured person is manifestly precluded from pursuing local remedies; or
- (e) The State alleged to be responsible has waived the requirement that local remedies be exhausted.

Part four

Miscellaneous provisions

Article 16

Actions or procedures other than diplomatic protection

The rights of States, natural persons, legal persons or other entities to resort under international law to actions or procedures other than diplomatic protection to secure redress for injury suffered as a result of an internationally wrongful act, are not affected by the present draft articles.

*Article 17**Special rules of international law*

The present draft articles do not apply to the extent that they are inconsistent with special rules of international law, such as treaty provisions for the protection of investments.

*Article 18**Protection of ships' crews*

The right of the State of nationality of the members of the crew of a ship to exercise diplomatic protection is not affected by the right of the State of nationality of a ship to seek redress on behalf of such crew members, irrespective of their nationality, when they have been injured in connection with an injury to the vessel resulting from an internationally wrongful act.

*Article 19**Recommended practice*

A State entitled to exercise diplomatic protection according to the present draft articles, should:

- (a) Give due consideration to the possibility of exercising diplomatic protection, especially when a significant injury has occurred;
 - (b) Take into account, wherever feasible, the views of injured persons with regard to resort to diplomatic protection and the reparation to be sought; and
 - (c) Transfer to the injured person any compensation obtained for the injury from the responsible State subject to any reasonable deductions.
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